

## § 1068.240

## 40 CFR Ch. I (7–1–04 Edition)

(c) If you modify an engine under this exemption, you must destroy the original emission label. If you sell or give one of these engines to someone else, you must tell the new owner in writing that it may be used only for competition.

EFFECTIVE DATE NOTE: At 69 FR 39267, June 29, 2004, §1068.235 was amended by revising paragraph (c), effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

### § 1068.235 What are the provisions for exempting engines used solely for competition?

\* \* \* \* \*

(c) If you modify an engine under paragraph (b) of this section, you must destroy the original emission label. If you loan, lease, sell, or give one of these engines to someone else, you must tell the new owner (or operator, if applicable) in writing that it may be used only for competition.

### § 1068.240 What are the provisions for exempting new replacement engines?

(a) You are eligible for the exemption for new replacement engines only if you are a certificate holder.

(b) The prohibitions in §1068.101(a)(1) do not apply to an engine if all the following conditions apply:

(1) You produce a new engine to replace an engine already placed in service in a piece of equipment.

(2) The engine being replaced was manufactured before the emission standards that would otherwise apply to the new engine took effect.

(3) No engine certified to current emission requirements is available with the appropriate physical or performance characteristics for the piece of equipment.

(4) You or your agent takes possession of the old engine.

(5) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year). This requirement applies only if the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine.

(c) If the old engine was not certified to any emission standards under this chapter, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when standards began to apply to engines of that size and type] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(d) If the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine, clearly label the replacement engine with the following language:

THIS ENGINE DOES NOT COMPLY WITH CURRENT FEDERAL NONROAD OR HIGHWAY EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN AS A REPLACEMENT ENGINE IN A VEHICLE OR PIECE OF EQUIPMENT BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earlier tier of emission standards began to apply to the old engine] IS A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

EFFECTIVE DATE NOTE: At 69 FR 39267, June 29, 2004, §1068.240 was revised, effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

### § 1068.240 What are the provisions for exempting new replacement engines?

(a) You are eligible for the exemption for new replacement engines only if you are a certificate holder.

(b) The prohibitions in §1068.101(a)(1) do not apply to an engine if all the following conditions apply:

(1) You produce a new engine to replace an engine already placed in service in a piece of equipment.

(2) The engine being replaced was manufactured before the emission standards that would otherwise apply to the new engine took effect.

(3) You determine that you do not produce an engine certified to meet current requirements that has the appropriate physical or performance characteristics to repower the equipment. If the engine being replaced was made by a different company, you must make this determination also for engines produced by this other company.

(4) You or your agent takes possession of the old engine or confirms that the engine has been destroyed.

(5) You make the replacement engine in a configuration identical in all material respects to the engine being replaced (or that of another certified engine of the same or later model year). This requirement applies only if the old engine was certified to emission standards less stringent than those in effect when you produce the replacement engine.

(c) If the engine being replaced was not certified to any emission standards under this chapter, add a permanent label with your corporate name and trademark and the following language:

THIS ENGINE DOES NOT COMPLY WITH U.S. EPA NONROAD EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A NONROAD ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the earliest tier of standards began to apply to engines of that size and type] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(d) If the engine being replaced was certified to emission standards less stringent than those in effect when you produce the replacement engine, add a permanent label with your corporate name and trademark and the following language:

THIS ENGINE DOES NOT COMPLY WITH U.S. EPA NONROAD EMISSION REQUIREMENTS. SELLING OR INSTALLING THIS ENGINE FOR ANY PURPOSE OTHER THAN TO REPLACE A NONROAD ENGINE BUILT BEFORE JANUARY 1, [Insert appropriate year reflecting when the next tier of emission standards began to apply] MAY BE A VIOLATION OF FEDERAL LAW SUBJECT TO CIVIL PENALTY.

(e) The provisions of this section may not be used to circumvent emission standards that apply to new engines under the standard-setting part.

**§ 1068.245 What temporary provisions address hardship due to unusual circumstances?**

(a) After considering the circumstances, we may permit you to introduce into commerce engines or equipment that do not comply with emission standards if all the following conditions apply:

(1) Unusual circumstances that are clearly outside your control and that could not have been avoided with reasonable discretion prevent you from

meeting requirements from this chapter.

(2) You exercised prudent planning and were not able to avoid the violation; you have taken all reasonable steps to minimize the extent of the nonconformity.

(3) Not having the exemption will jeopardize the solvency of your company.

(4) No other allowances are available under the regulations in this chapter to avoid the impending violation.

(b) To apply for an exemption, you must send the Designated Officer a written request as soon as possible before you are in violation. In your request, show that you meet all the conditions and requirements in paragraph (a) of this section.

(c) Include in your request a plan showing how you will meet all the applicable requirements as quickly as possible.

(d) You must give us other relevant information if we ask for it.

(e) We may include reasonable additional conditions on an approval granted under this section, including provisions to recover or otherwise address the lost environmental benefit or paying fees to offset any economic gain resulting from the exemption. For example, in the case of multiple tiers of emission standards, we may require that you meet the less stringent standards.

(f) Add a permanent, legible label, written in block letters in English, to a readily visible part of each engine exempted under this section. This label must include at least the following items:

(1) The label heading "EMISSION CONTROL INFORMATION".

(2) Your corporate name and trademark.

(3) Engine displacement (in liters), rated power, and model year of the engine or whom to contact for further information.

(4) The statement "THIS ENGINE IS EXEMPT UNDER 40 CFR 1068.245 FROM EMISSION STANDARDS AND RELATED REQUIREMENTS."

EFFECTIVE DATE NOTE: At 69 FR 39268, June 29, 2004, §1068.245 was amended by revising paragraphs (a) introductory text and (e), effective Aug. 30, 2004. For the convenience of